

C REAL ESTATE LAW

Danger may lurk below when it comes to mineral rights

It is of critical importance that land developers understand the complexities of surface and mineral rights, and how those rights can affect land development.

In Texas, real property ("land") can be severed into two different estates: the surface estate and the mineral estate. The surface estate owner has the right to the land's surface, whereas ownership of the mineral estate provides ownership of the minerals (i.e., oil and gas) in, on, and under such land.

If there has been no severance of land into the two different estates, the owner of the surface estate will also possess the mineral estate underneath the land. Possession of the mineral estate provides the landowner with the right to drill for and develop the minerals (subject to state and local laws), to lease or sell the development rights of the mineral estate to third parties, or to separate the mineral estate from the surface estate.

If the land has been severed and there are separate owners of the surface and mineral estates, then the surface estate owner should be aware that the mineral estate is the dominant of the two estates. In other words, the mineral estate owner, as owner of the dominant estate, has the right to make any use of the surface that is reasonably necessary to extract the minerals from the land.

Moreover, the surface estate owner typically has no right, unless explicitly stated to the contrary in an agreement between



BRETT SLOBIN

the two parties to require the mineral estate owner to restore the surface estate to its original condition.

Therefore, if the surface estate of the land is purchased, but a third party has title to the mineral estate of the land, then that third party may have the right to drill for oil and gas on the surface of the land. Purchasing land that has been severed from the mineral estate could result in the following ill effects for the landowner — the possibility of having a well drilled on the land, the owner's inability to acquire financing from a lender for construction of improvements on the land, or problems selling the land.

Developers of land should first ascertain whether the land is subject to outstanding mineral interests by ordering a title commitment for the land in question. The title commitment will inform the developer as to whether there is an outstanding mineral estate associated with the land.

If the mineral estate is outstanding, and drilling for oil and gas is a possibility, then the purchaser of the surface estate should attempt to acquire a waiver of the mineral estate owner's right to go onto the surface of the land to extract the minerals from below the surface estate. In order to protect itself from a mineral estate owner, the surface estate owner may

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6015 ELLA LEE LANE • OPEN 12-2 PM

Wonderful new construction in Overstreet, designed by Architectural Solutions, is situated on a 3,400 sq. ft. lot. Outstanding features include a beautiful entry with iron vault and circular staircase; double French doors to paneled study; living room with fireplace; dining room with French door to covered patio; butler's pantry with wet bar; gourmet kitchen with slab granite counters and stainless appliances; and an upstairs game room. Other features include family room with fireplace; master suite with luxurious baths; slab stone counters in all bathrooms; hardwoods and stone floors; covered patio with summer kitchen; porte cochere; elevator; slate roof, copper gutters & much more! Priced at \$2,299,000.



6015 FLOYD • OPEN 3-5 PM

Wonderful new Mediterranean home by Carlton Construction near Memorial Park just minutes from downtown and The Galleria. Outstanding features include beautiful entry with curved staircase, nice formals, butler's pantry; fantastic island kitchen with slab granite counters and stainless appliances; wet bar with wine refrigerator; and family room with built-ins and fireplace with cast stone mantel & surround. Other features include library with built-ins; master suite with luxurious bath; provision for future elevator; hardwoods; stone floors, slate patio, tile roof, and much more. A truly stunning home! Priced at \$1,425,000.

CYPRESS/TOMBALL AREA



18431 CYPRESS ROSEHILL RD.

Beautiful 12.288 acre horse farm behind gates in Oaks of Cypress featuring 8-stall barn with air conditioned office and tack room, feed storage, and bathing station; covered 80-foot training pen, professionally lighted outdoor riding arena; hydraulic horse walker; fenced and cross-fenced. Other features include 3 bedrooms; 2.5 bath home; covered truck/trailer storage area; stocked lake; 2 water wells, water to all pastures, asphalt entry road, wonderful oak trees, and great building site on front of property. Priced at \$1,200,000.

MEMORIAL PARK AREA



6035 FLOYD • OPEN 3-5 PM

Outstanding new Mediterranean-style stucco home, with tile roof, by Carlton Construction near Memorial Park. Features include entry with groin vaults, curved staircase with decorative iron balustrade, formals, butler's pantry; island kitchen with slab granite counters and stainless appliances including refrigerator/freezer; wet bar with refrigerator; family room with built-ins and fireplace; library with built-ins; master suite with luxurious marble bath; and finished third floor with bath. Other features include elevator; travertine and hardwood floors; each bedroom has a suite bath; slate patio; balcony; and more. A truly stunning home priced at \$1,899,000.

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CONSUMER

BBB ON HOMES

End-of-month closing benefits buyer

Q: Why do real estate agents always want to set up a closing at the end of the month? It's more convenient for me to close earlier, and everyone insists we should wait. Do they make more money off of me by waiting until the end?

A: Actually, it's the opposite effect on your pocket-book. Closing early in the month requires you to prepay the interest for each day until your first loan payment is due. Most mortgages are due the first of the month, so you want to prepay as little interest as possible by waiting until the last minute. If you closed early in the month, you would be required to bring more cash to the closing table. Most people prefer to have the extra cash for those unexpected new-house surprises.

Q: I have a casual friend who is a real estate agent. I decided to put my house on the market and invited her to do a market analysis on my home. I also asked two other agents to discuss a price and the prospect of listing my home. My friend and another agent suggested I ask around \$325,000 and supported the price with comps from the



BRENT ROGERS

neighborhood. The third agent said I should ask \$389,000. She said my house had more curb appeal and extra features that would push the price higher. Obviously, I'm tempted to go with the higher number, and don't want to betray a friendship, either. How should I handle this situation politically?

A: I suspect your friend is the one being straightforward with you about the price. Some agents make a habit of inflating the estimated market value while telling sellers everything they want to hear. This is a sales strategy for acquiring listings, and does the seller a disservice. Often, once a seller "believes" the house is worth more, he will stand firm behind the price, rejecting reasonable fair-market offers.

Remember, the market analysis simply is an educated guess. It's not binding, a listing agreement is. If you truly believe your home would sell for more, discuss this with your friend and request you list it at a higher asking price. Don't punish the two agents who were honest by giving the contract to the one who inflated

the price. It's also important to consider the appraisal when setting a higher price than similar homes in your neighborhood. Appraisers often find a way to come close to the agreed upon price, though that doesn't always happen. If all the comps on your street say your home is worth \$300,000, a buyer may have trouble financing it at \$389,000 without paying the difference out of pocket.

Check with the Better Business Bureau, www.BBBhouston.or, and the Texas Real Estate Commission at www.trec.state.tx.us about the Realtors.

It sounds like she's honest, which is a great sign. The question now is if she can sell your home. Don't be afraid to pick the most qualified Realtor over a casual friend. You wouldn't choose a doctor because she was an acquaintance. Make your decision based on qualifications, and you're likely to be satisfied. The only thing worse than hiring a friend who is inadequate, is firing a friend who is inadequate.

Send questions regarding homeowner issues to Brent Rogers, Better Business Bureau, 1333 West Loop South, Suite 1200, Houston, Texas 77027, or e-mail him at brogers@bbbhhou.org. Be sure to include your mailing address and phone number with all letters and e-mail questions.

MINERAL: Several factors govern rights

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look to the following:
 ■ Municipal ordinances that restrict drilling rights;
 ■ Purchasing the outstanding mineral interests from the mineral estate owner;
 ■ Land that is located in an area that has few, if any, mineral resources;

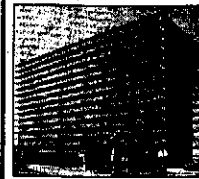
■ Various restrictions set forth by the Texas Railroad Commission limiting the opportunities to drill; and
 ■ An agreement with the mineral estate owner to locate the drilling well in an unobtrusive location.

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Houston law firm of Slobin & Slobin P.C., and he can be reached at bslobin@slobinlaw.com. His practice focuses on commercial and residential real estate. The information contained in this article is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.

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NEW HIGH-RISE LISTING!
 RIVER OAKS AREA
 DOUBLE CORNER APARTMENT
 IN THE WILLOWICKI
 2200 WILLOWICK

Beautiful, sweeping, almost uninterrupted 180-degree views of downtown and River Oaks from the most desirable corner of most desirable floor in this most desirable building in the most desirable part of Houston! Not too high, and not too low - just right! And you don't have to dispose your cherished possessions in order to get down from a larger home - two apartments were skillfully combined to make a spacious 2,560-foot mansion in the sky! A 125-sq-ft

terrace wraps around it to use for plants, porch and dining furniture, and pets, making it seem even more commodious. Gigantic living and dining room area will hold a multitude of friends, and who wouldn't enjoy party watching the sunset and the lights coming on downtown - feels as though you are in Manhattan overlooking Central Park at night! Redone kitchen and breakfast room makes it a pleasure to prepare and breakfast while watching the sunrise, if you're a morning person. There are two bedrooms plus a study which could be used for a third bedroom, and the master bedroom itself is large enough to convert into two more bedrooms. There is so much space that it could easily be reconfigured to suit your individual needs. The close (one by Programme Martin) and storage are more than abundant, a rarity in high-rise apartments. There are assigned parking places, extra parking, a pool which becomes a lovely fountain at night off the north balcony several guest rooms available for overflow visitors if you ever needed them, and the usual amenities of reception room, exercise room, utility room, storage lockers, etc., for the residents. The security is outstanding, and whole staff is unusually efficient, helpful and gracious - you can tell the minute you meet them that every one who works here is proud of his building and loves his job! You can't improve on the location - at the edge of River Oaks, a few blocks from Highland Village and Central Market, a mile from Post Oak and the Galleria - twelve minutes from downtown and the Medical Center. If you're tired of the everyday upkeep of a house, you want a luxurious, carefree way to live in the middle of everything, join the happy denizens of the Willowick!



RIVER OAKS
 STUNNING
 NEW LISTING!
 OPEN 1:00-3:00
 3214 AVALON

Even before you go in a very special front door you know that this is going to be an extraordinary house! The view to the front through a wrought-iron fence is a beautiful vignette - a gated flagstone courtyard with fountain wall which has served well as a wonderful, secure outdoor playground for the smallest children in the family and the playmates. An open stairway rises in the center of the spacious living and dining rooms into

them look even larger. Off the living room, a just-completed wine room with custom Spanish cedar wine racks holds more bottles than we could count and has stereo speakers, wiring for a flat-screen TV on the brick wall, and a table for a table and chairs. Go from the living room through antique French doors to the family room, with surround sound, a long media wall and windows all across the back overlooking the patios and pool. It's completely open to the kitchen/breakfast area - this house will hold literally hundreds of people and not feel crowded! The best way to summarize the kitchen is to say that it should be in Architectural Digest! Just outside the huge breakfast/sitting area is a very elaborate summer kitchen, and you can enjoy the 44-foot heated pool and a beautifully landscaped, mosquito-free yard all year around. The number of bedrooms depends upon what you want to use them for. There are four on the second floor, plus a well-placed study. The fourth bedroom at the back stairway could be a separate suite, with a private balcony and spiral staircase to the pool. The master has surround sound, wiring for a flat-screen TV, closet with all the extras by Programme Martin, and an ultra-luxurious bath with steam shower, oversized Jacuzzi, etc., totally remodeled in 2003. The family's favorite place to watch movies together is in the third-floor media/playroom, which could easily be used as a fifth bedroom. The 560-square foot quarters has a peaked, beam ceiling in the main room, bath with tub/shower, separate A/C and alarm systems, and a kitchen with everything perfect for long-term guests or returning college students. The garage has a covered area for a third car or more play space, and there are two concealed parking spaces in front. Video monitoring of the front door, driveway, and front courtyard provides extra peace of mind and easy child supervision. One of the main reasons the family loves to party with this house is the playground a block away where the whole neighborhood congregates for running, playing, or just visiting. There have been so many recent renovations that it is now more new than old and every one of them, seen and unseen, has been undertaken with the greatest care and attention to detail. You can see a prime example of the philosophy that, "It pays to go first class!"



RIVER OAKS
 NEW LISTING!!
 ST. JOHN'S AREA
 OPEN 3:30-5:30
 3471 WICKERSHAM

On a tree-shaded corner, around the corner from St. John's and Pumpkin Park, is a classic ante-bellum Colonial home, it always been the object of much admiration. It has been brought up inside to the very first century in every way and has more than enough space for today's active family. It's a wonderful house for entertaining, with its ceilings, gracious formal living and dining rooms, a big family room off the kitchen and a picture-perfect garden room to die for - tall painted stone walls, wiring for flat-screen TV, a painted beamed ceiling and two walls of windows and French doors going out to the newly landscaped back patio. Nothing has been missed in attention to the minutest details - the entrance hall has hand-painted floors, and the dining room (with crystal chandelier) is the most exquisite shade of blue. There are wood-burning fireplaces in the family room and living room, lots of shelving for display and tons of storage. The kitchen has the finest stainless steel appliances, two separate sink areas, beautiful "antique" built-in cabinet, and a huge butcher-block island with room for the whole gang!